



# Procedural Safeguards Guidelines



April 2003

# **Guidelines for Procedural Safeguards In the New Jersey Early Intervention System**

## **INTRODUCTION**

The New Jersey Department of Health and Senior Services (DHSS) is designated by the State of New Jersey as the lead agency for early intervention for children, birth to age three, with developmental delays/disabilities and their families. As such, the DHSS is ultimately responsible for ensuring the effective implementation of procedural safeguards by each public agency and private provider in the state that is involved in the provision of early intervention services. These procedural safeguards, which are available to all families, are described in the booklet entitled “Family Rights in the New Jersey Early Intervention System” and the following guidelines.

Part I of these guidelines “Parental Participation in Early Intervention” includes written procedures for prior notice; parental consent; primary language; opportunity to examine records; confidentiality and surrogate parents. Part II of the document “Formal Dispute Resolution” includes written procedures for receiving, investigating and resolving complaint(s); resolving individual child disputes through impartial hearing; and resolving disputes through mediation. These guidelines are consistent with Part C of the Individuals with Disabilities Education Act (IDEA) and do not negate any other due process rights that may exist in New Jersey.

DHSS is committed to maximizing family involvement in each step of the New Jersey Early Intervention System. As part of ensuring the parents’ involvement in decision-making and maintaining the partnerships so critical to the success of the program, DHSS highly recommends that all parties work together using informal means to resolve disagreements that may arise. Parent liaisons are available through the Procedural Safeguards Office to advise parents of their rights under the Early Intervention System and help them understand the options available to them when disputes arise. Parents can work with staff from Regional Early Intervention Collaboratives (REICs), service providers, and the system’s parent liaisons to resolve concerns in an attempt to avoid formal procedures whenever possible. If the informal means discussed above do not resolve the concerns of the parties involved, DHSS offers multiple options for the formal resolution of disagreements. A family may request formal dispute resolution at any time, including mediation, due process hearing, or complaint investigation.

## **I. PARENTAL PARTICIPATION IN EARLY INTERVENTION**

### **A. PRIOR NOTICE (34 CFR 303.403)**

1. To ensure parental attendance and participation throughout the early intervention process, written prior notice shall be provided to the parents of a child eligible under Part C of IDEA ten calendar days before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement

- of the child, or the provision of appropriate early intervention services to the child and the child's family.
2. The notice must be in sufficient detail to inform the parents about:
    - a. The action being proposed or refused;
    - b. The reasons for taking the action;
    - c. All procedural safeguards that are available; and
    - d. The state complaint procedures including a description of how to file a complaint and the timelines under those procedures.
  3. The notice must be:
    - a. Written in language understandable to the general public; and
    - b. Provided in the primary language of the parents, unless it is clearly not feasible to do so. Note that primary language shall be consistent with IDEA Part B, 34 CFR 300.19. If the parent's primary language or other mode of communication is not written, the public agency or designated service provider shall take steps to ensure that:
      - i. The notice is translated orally or by other means to the parent in the parent's primary language or other mode of communication;
      - ii. The parent understands the notice; and
      - iii. There is written evidence that these requirements have been met.
  4. If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

## **B. PARENT CONSENT (34 CFR 303.401 and 303.404)**

### **1. Definition of Consent**

- a. Consent means that-
  - i. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's primary language or other mode of communication;
  - ii. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - iii. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

### **2. Consent Requirements**

Recognizing that it is important to begin collaboration between parents and service providers from the point of first contact, the early intervention system shall provide parents with the opportunity to be actively involved in the evaluation, assessment, and identification and provision of services for their children. Parents choose their level of involvement. The service coordinator assigned to a family will provide information regarding evaluation, assessment, services and options for family involvement so that parents will have a clear understanding about the purpose of their consent.

- a. Written parental consent must be obtained before:
  - i. Conducting initial evaluation and assessment and
  - ii. Initiating the provision of early intervention services.
- b. If parental consent is not given, the public agency shall make reasonable efforts to ensure that the parent:

- i. Is fully aware of the nature of the evaluation and assessment or the services that would be available; and
  - ii. Understands that the child will not be able to receive the evaluation and assessment or the services unless consent is given.
- c. The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

**3. Right to Decline Services**

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with state law, and may decline such a service after first accepting it, without jeopardizing other early intervention services.

**C. NATIVE LANGUAGE (34 CFR 303.401 and 303.403)**

Native (Primary) language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under Part C of IDEA.

**D. OPPORTUNITY TO EXAMINE RECORDS (34 CFR 303.402)**

In accordance with the confidentiality procedures in the regulations under Part B of IDEA, the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under the New Jersey Early Intervention System involving records about the child and the child's family.

**E. CONFIDENTIALITY OF INFORMATION (34 CFR 303.460)**

- 1. Personally identifiable means information that includes-
  - a. The name of the child, the child's parent, or other family member;
  - b. The address of the child;
  - c. A personal identifier, such as the child's or parent's social security number; or
  - d. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- 2. New Jersey has policies and procedures for ensuring the confidentiality of any personally identifiable information collected, used or maintained, including the right of parents to written notice of and written consent of the exchange of information among agencies consistent with federal and state law and will meet the requirements of Part B of IDEA.
- 3. Policies and procedures to insure confidentiality of information must meet the following requirements:
  - a. Definitions
    - i. "Destruction" means physical destruction or removal of personal identifiers from information so that information is no longer personally identifiable.
    - ii. "Educational records" means the type of records covered under the definition of education records in Part 99 of 34 CFR, the regulations

implementing the Family Educational Rights and Privacy Act of 1974 (FERPA).

- iii. "Participating agency" means any agency/institution, including service coordination and early intervention program providers which collects, maintains, or uses personally identifiable information or from which information is obtained under Part C of IDEA.

b. Notice to Parents

- i. DHSS shall give notice which is adequate to fully inform parents including:
  - (1) A description of the extent the notice is given in the primary languages of the various population groups in the state;
  - (2) A description of the children on whom personally identifiable information is maintained, types of information maintained, types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
  - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention and destruction of personally identifiable information; and
  - (4) A description of all the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 (FERPA) and implementing regulations in Part 99 of 34 CFR.
- ii. Before any major identification, location, or evaluation activity, the notice will be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.
- iii. These requirements are specified in the interagency agreement with the Department of Education to support Child Find activities for infants and toddlers.

c. Access Rights to Records

- i. Each participating agency shall permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under Part C of IDEA. The agency shall comply with the request without unnecessary delay, and in no case, more than 45 calendar days after the request has been made. In addition, the agency shall provide access to records when requested prior to the IFSP meeting or dispute resolution related to the child's identification, evaluation, or placement, or provision of early intervention services of the child.
- ii. The right to inspect and review records includes:
  - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
  - (2) The right to request that the agency provide copies of records containing information, if failure to provide those copies would effectively prevent the parent from exercising their right to inspect/review records; and
  - (3) The right to have a representative of the parent inspect and review records with parental consent.
- iii. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that

the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

- d. Record of Access
  - i. Each participating agency shall keep a record of parties obtaining access to early intervention records collected, maintained or used under Part C of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date of access, and the purpose for which the party is authorized to use the record.
- e. Records on More Than One Child
  - i. If any early intervention record includes information on more than one child, parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.
- f. List of Types and Locations of Information
  - i. Each participating agency shall provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.
- g. Fees
  - i. A participating agency may charge fees for copies of records if the fee does not prevent the parents from exercising their right to inspect and review those records.
  - ii. A participating agency may not charge a fee to search for or to retrieve early intervention records.
- h. Amendment of Records at Parent's Request
  - i. A parent, who believes information in early intervention records collected, maintained or used under Part C of IDEA is inaccurate or misleading or violates privacy or other rights of the child, may request in writing to the Procedural Safeguards Office that such records be amended.
  - ii. The Procedural Safeguards Office shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request not to exceed twenty calendar days.
  - iii. If the decision is to amend the record, that amendment must be completed within ten calendar days of the decision date.
  - iv. If the Procedural Safeguards Office decides to refuse to amend the information in accordance with the request, it shall inform the parent of refusal and advise the parent of the right to a hearing under the following provisions.
  - v. The Procedural Safeguards Office shall inform the parent of their right to place a statement in the record commenting on information or setting forth any reasons for disagreeing with the decision of the agency.
- i. Opportunity for a Hearing
  - i. The DHSS shall, on request, provide opportunity for a hearing to challenge information in the early intervention record to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

- j. Result of Hearing
  - i. If a hearing determines information is inaccurate, misleading, or violates privacy or other rights of the child, the Procedural Safeguards Office will ensure that the record is amended and inform the parents in writing.
  - ii. If the hearing determines information is not inaccurate, misleading, or violates privacy or other rights of the child, the DHSS or participating provider agency shall inform the parent of their right to place a statement in the record commenting on information or setting forth any reasons for disagreeing with the decision of the agency.
  - iii. Any explanation placed in the early intervention record must:
    - (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
    - (2) Be disclosed, if the record or contested part of the record is disclosed to any party.
- k. Hearing Procedures
  - i. A hearing held under this section must be conducted consistent with the statewide impartial hearing system defined in II, B of these guidelines.
- l. Consent
  - i. Written parental consent must be obtained before personally identifiable information is disclosed to anyone other than the officials of the participating agency collecting or using information under this section, subject to ii below, or used for any purpose other than meeting the requirements under Part C of IDEA.
  - ii. An agency shall not release information from the record to participating agencies without parental consent unless authorized to do so under FERPA, 99.31.
  - iii. Should there be disagreement between the service coordinator agency and the parent regarding release of personally identifiable information, a hearing under k. above would have to be conducted.
- m. Safeguards
  - i. Each participating agency shall protect confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.
  - ii. One official at each of the participating agencies shall assume responsibility for insuring confidentiality of personally identifiable information.
  - iii. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures of Part B of IDEA (34 CFR Part 300) and FERPA (34 CFR Part 99).
  - iv. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within an agency who may have access to personally identifiable information.
- n. Destruction of Information
  - i. The public agency shall inform parents when personally identifiable information collected, maintained or used under Part C of IDEA is no longer needed to provide early intervention services to the child.
  - ii. The information must be destroyed at the request of the parents. However, a permanent record of the child's name, address, phone number, attendance and year completed may be maintained without time limitations.

- o. Enforcement
  - i. The Department of Health and Senior Services shall collect and maintain information through its supervision and monitoring process, to insure all requirements governing the confidentiality of records, and information maintained under this part, are being implemented by participating agencies.
  - ii. Each participating agency provides the Department of Health and Senior Services with assurances that they will comply with the program specifications for grants/contracts, sub-grants, letter of agreements and consultant contracts. Each agency must have policies and procedures that include the compilation, maintenance, access to and confidentiality of records.
  - iii. In the event compliant deficiencies are identified, the DHSS or REIC will report the deficiency, in writing, to the responsible agency. This report will describe the unmet requirement leading to the deficiency, specify the action necessary to correct the deficiency, and establish a timeline for implementing the corrective action. If corrective action is not taken, and if further assistance from appropriate enforcement personnel is unsuccessful in remedying the deficiency, the Department of Health and Senior Services or REIC may terminate or not renew the grant/contract, sub-grant or consultant contract, depending on the seriousness of the findings.
- p. Department Use of Personally Identifiable Information
  - i. If the Department of Health and Senior Services or its authorized representatives collect any personally identifiable information regarding disabled children that is not subject to 5 USC 552a (The Privacy Act of 1974), the Commissioner shall apply the requirements of the Statute (5 USC 552a) and the regulations implementing those provisions.

#### **F. SURROGATE PARENTS (34 CFR 303.406)**

- 1. The Department of Health and Senior Services ensures that the rights of eligible children under Part C of IDEA are protected if:
  - a. No parent as defined in Part C of IDEA can be identified;
    - i. A parent is defined as a biological or adoptive parent of a child; a guardian, a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare). The term does not include the state if the child is a ward of the state. (see 34 CFR 303.19)
    - ii. A surrogate parent who has been appointed in accordance with 303.406. Unless parental rights have been terminated by a court of appropriate jurisdiction, the biological parent retains all rights under Part C of IDEA.
    - iii. A foster parent may act as a parent under Part C of IDEA if:
      - (1) The biological parent's authority to make the decisions required of parents under Part C of IDEA has been extinguished under state law;
      - (2) The foster parent has an ongoing, long-term parental relationship with the child;
      - (3) The foster parent is willing to make the decisions required of parents under Part C of IDEA; and
      - (4) The foster parent has no interest that would conflict with the interests of the child.



- b. The service coordinator, after reasonable efforts, cannot discover the whereabouts of the parent; or
  - c. The child is a ward of the state under the laws of New Jersey.
- 2. The DHSS has designated the service coordinator responsible to determine which children are eligible for the appointment of a surrogate parent.
  - a. Records about the child that are kept by other agencies can serve as documentation of the child's status in relation to his/her eligibility for a surrogate parent.
  - b. The service coordinator is required to present written documentation that a parent cannot be identified or located and that there are no persons who are legally responsible for the child's welfare or that the child is a ward of the state. A parent includes persons acting in the place of a parent, such as a grandparent or stepparent with whom the child lives.
  - c. If the rights of the parent have been terminated, the service coordinator must consult with the child's case manager at DYFS to determine whether the foster parent meets the criteria established under the definition of parent and can act on behalf of the child. If the foster parent meets the definition of parent in accordance with these criteria, the service coordinator proceeds to work with the foster parent as the parent of the child.
  - d. Once the need for a surrogate parent has been established, it is the responsibility of the service coordinator to identify and appoint an appropriate surrogate parent immediately. The service coordinator shall follow procedures established by the DHSS for appointing a surrogate parent. These procedures include:
    - i. How the agency makes the final determination that the child is in need of a surrogate parent;
    - ii. A system for identifying and appointing surrogate parents; and
    - iii. A system for documenting assignments and/or appointments of persons to serve as surrogate parents.
- 3. Criteria for Selecting Surrogates
  - a. The state Procedural Safeguards Office may select a surrogate parent in any way permitted under state law. The Procedural Safeguards Office will ensure that distribution and training on the policy for surrogate parents is provided statewide. The policy ensures that the assignment of a surrogate parent will be based upon the following criteria:
    - i. The surrogate parent shall have no interest that conflicts with the interest of the child represented; and
    - ii. The surrogate parent shall have the knowledge and skills that ensure adequate representation of the child.
- 4. Non-employee requirement; Compensation
  - a. The person assigned as a surrogate parent shall not be-
    - i. An employee of any state agency, or
    - ii. A person, or an employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler.
  - b. A person who otherwise qualifies to be a surrogate parent shall not be considered an employee of the public or private agency solely because he/she is paid to serve as a surrogate parent.
- 5. Responsibilities
  - a. The surrogate parent may represent a child in all matters related to-

- i. The evaluation and assessment of the child;
- ii. Development and implementation of the child's IFSPs, including annual evaluations and periodic review;
- iii. The ongoing provision of early intervention services to the child; and
- iv. Any other rights established under Part C of IDEA.

## **II. FORMAL DISPUTE RESOLUTION**

The DHSS has designated the state Early Intervention Procedural Safeguards Office, herein referred to as the Procedural Safeguards Office, to ensure the resolution of disputes within the Early Intervention System. Options for resolving disputes include mediation, impartial hearings and complaints. All requests for complaint investigation and resolution, mediation, and/or due process, are to be filed with the Procedural Safeguards Office consistent with these procedures.

### **A. MEDIATION PROCEDURES (34 CFR 303.419)**

#### **1. Statewide Mediation System**

A statewide mediation system is available to ensure parents may voluntarily access a non-adversarial process for the resolution of individual disputes regarding the Early Intervention System including identification, evaluation and assessment, eligibility determination, placement or the provision of appropriate early intervention services. The Procedural Safeguards Office identifies community dispute resolution centers, mediation centers, and/or individual mediators to provide early intervention mediation services. Mediators are required to undergo training as a condition of serving as mediators. The Procedural Safeguards Office shall maintain a list of qualified and impartial mediators who are trained in effective mediation techniques and are knowledgeable in laws, regulations and guidelines related to the provision of early intervention services.

#### **2. Availability of Mediation**

- a. Mediation services for the resolution of individual disputes regarding identification, evaluation and assessment, eligibility determination, placement or the provision of appropriate early intervention services shall be available, at no cost, upon the request of the parent, service coordinator, service provider, and/or REIC. However, mediation participation by the parent is voluntary.
- b. Mediation cannot be used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part C of IDEA. The parent can request mediation alone or simultaneously with a request for a due process hearing and may refuse or withdraw from the mediation process at any time. A parent may also file a request for mediation when filing a complaint.
- c. If mediation is selected by the parent as an option to be used in dispute resolution, the REIC and/or DHSS service provider(s)/agencies must participate in the mediation. If mediation is requested by any party other than the parent, it may only be initiated with the consent of the parent(s).
- d. Resolutions that involve additional costs that are offered to the parent by the provider, during mediation, may be the responsibility of the provider.

3. **Request For Mediation**

- a. A request for mediation shall be in writing, signed and dated by the parent or, with the parent's consent, her/his representative, or by an authorized representative of the REIC, service provider/agency seeking mediation. If a parent wishes to file a request for mediation, it is the responsibility of the service coordinator and/or the REIC to assist the parent, in the parent's primary language and/or mode of communication to the maximum extent possible, to prepare the request in written form.
- b. If the REIC or service provider/agency seeking mediation has obtained the written consent of the parents to engage in mediation, evidence of that written consent shall be attached to the request for mediation. The REIC or service provider/agency's request that the parent agree to participate in mediation shall be made in writing in the primary language of the parent, to the maximum extent possible, and in a manner understandable to the parent. If the parent's primary mode of communication is sign language or Braille, the request shall be made utilizing the parent's primary mode of communication.

4. **Responsibility of Procedural Safeguards Office**

The Procedural Safeguards Office maintains a log of all mediation requests received that are not part of a complaint or due process hearing. Each mediation request shall be date-stamped immediately upon receipt. The date the mediation request was received and name of the requester are entered into the mediation log. The completion date of each step in the process must be entered in the mediation log. Each mediation is numbered sequentially by year. For example, M: 01-SFY02 would be the first mediation request received in state fiscal year 2002. A file is created containing all the documents related to the mediation.

- a. Determine parental consent for mediation: If the parent does not consent to mediation, the Procedural Safeguards Office shall notify the REIC or service provider/agency seeking mediation. If the parent does consent, the Procedural Safeguards Office shall confirm that the parent has given informed consent to mediation.
- b. Notice of mediation: Within two business days of a request for mediation by a parent, or confirmation of parental consent to mediation, the Procedural Safeguards Office shall identify an appropriate mediator, in writing, of the request for mediation. Parties to the mediation process shall be sent a copy of such notification, which shall include:
  - i. The names, addresses and phone numbers of the parties to participate in the mediation;
  - ii. The need for interpretive or translation services, or alternative communication services, if any;
  - iii. The nature of the dispute, which has resulted in the request for mediation;
  - iv. The obligation of the party(s) representing the Early Intervention System to bring to the mediation a complete copy of the child's early intervention record;
  - v. The right of both parties to bring any documentation or information believed relevant to the issues under discussion, and to be accompanied by any person of their choice;

- vi. A statement advising parents that it is not necessary to have an attorney at the mediation and that if they decide not to bring an attorney, the other parties cannot bring attorneys to the mediation;
  - vii. A statement advising all parties that they are not entitled to legal fees under the Early Intervention System;
  - viii. A description of the mediation process, including the non-adversarial nature of the process;
  - ix. The voluntary nature of mediation for the parent, including the ability of the parent to refuse or withdraw from the mediation process at any time; and that mediation cannot be used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part C of IDEA, including resolution of a complaint; and
  - x. The parent's right to request an impartial hearing or file a complaint at any time in the process.
- c. Scheduling the Mediation
- i. The Procedural Safeguards Office shall make appropriate arrangements for the mediation proceeding.
  - ii. The mediation proceedings shall be convened within ten calendar days of the receipt of the request for mediation at a date, time and location convenient to the parties.
  - iii. The Procedural Safeguards Office notifies the parties in writing of the date, time and location of the mediation proceedings.
  - iv. The Procedural Safeguards Office shall ensure, as needed to the maximum extent possible, the provision of appropriate interpretive, translation or alternative communication services.
5. **Responsibility of Mediator**
- The mediator shall ensure mediation proceedings are conducted in an efficient, objective and timely fashion.
- a. Mediator Responsibilities in Mediation Proceedings
- i. The mediator shall maintain the confidentiality of all personally identifiable information as required by state and federal law.
  - ii. Prior to the initiation of the mediation proceedings, the mediator shall inform both parties of:
    - (1) The parent's right at any time to withdraw from mediation and initiate an impartial hearing;
    - (2) The fact that resolutions that involve monetary reimbursement to the parent must be consistent with the current service provider's contract and may become the responsibility of the provider; and
    - (3) The confidential nature of all information related to the request for mediation and mediation proceedings.
  - iii. The mediator shall conduct the proceedings fairly and impartially, and shall not be bound by formal rules of evidence or proceeding.
  - iv. During the mediation proceedings, the mediator shall:
    - (1) Explain his/her role as a facilitator to assist parents and other parties to reach agreement;
    - (2) Inform all parties of the confidential nature of all information related to the mediation;

- (3) Inform all parties that discussions held during the mediation can not be used as evidence in any subsequent due process hearing or civil action;
  - (4) Allow each party to present their point of view concerning the disagreement;
  - (5) Engage in focused discussion and problem-solving with all parties; and
  - (6) Work with all parties to develop the positive rapport, respect and trust needed to work in a collaborative process on behalf of the child.
- v. During the mediation proceedings, the mediator may:
  - (1) Ask questions of any and all parties;
  - (2) Restate each party's position in an attempt to clarify the underlying issues;
  - (3) Caucus with each party privately. Such discussions are kept confidential from the other party unless she/he receives permission to reveal the contents of the caucus discussion;
  - (4) Identify areas of agreement, and narrow areas of disagreement; and
  - (5) Suggest compromises based on their knowledge of the law, facts, "best practice," and positions of the parties.
- vi. Mediation proceedings may not be taped, nor may any party introduce information regarding discussions held during mediation as evidence in any subsequent due process hearings or civil proceeding.
- b. Mediation Timelines
  - i. The mediation process, including issuance of a written mediation agreement, shall be completed within 30 calendar days of the receipt of the request for mediation unless the mediation was requested as a part of a due process hearing or complaint investigation. In that case, the mediation must be completed within 15 calendar days to ensure adequate time for completion of the due process proceeding or complaint investigation.
- c. Documentation of Agreement
  - i. When mediation has resulted in successful negotiation of a partial or full agreement on areas in dispute between the parties, the mediator shall document the terms of the negotiated agreement in writing and obtain the signatures of both parties on the written agreement before the mediation is adjourned. The written agreement shall be clear, as concise as possible, and specific with regard to agreements reached and responsibility for implementation of agreement.
  - ii. Whenever possible, the mediator shall provide the written agreement in the primary language or mode of the communication of the parent. If the mediator cannot fulfill this responsibility, it shall be the responsibility of the Procedural Safeguards Office to ensure the translation of the written agreement, to the maximum extent possible.
  - iii. The mediator shall forward a copy of such agreement to the Procedural Safeguards Office, who shall ensure that the parties receive a copy of the written agreement within five business days of receipt of the written agreement and document these activities in the mediation log. The service coordinator and the relevant REIC also receive a copy of the resolution.
- d. Failure to Reach Agreement
  - i. When the mediator determines that a negotiated resolution of the issues being mediated is not possible, the mediator shall forward a letter to the

Procedural Safeguards Office indicating that no agreement was reached, and requesting the Procedural Safeguards Office to notify the parties that:

- (1) No agreement was reached;
- (2) The process is confidential;
- (3) Discussions held during the mediation can not be used as evidence in any subsequent due process hearing or civil action; and
- (4) Parents have the right to an impartial hearing or complaint investigation and the procedures for requesting these dispute resolution options.

e. Meeting to Encourage Mediation

New Jersey may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party-

- i. Who is under contract with a parent training and information center or community parent resource center in the state established under Sec 682 or 683 of IDEA, or an appropriate alternative dispute resolution entity; and
- ii. Who would explain the benefits of the mediation process and encourage the parents to use the process.

6. **Responsibilities of Service Coordinator**

The service coordinator shall ensure that the terms of the written agreement are incorporated into the IFSP within five business days (based on approved agency calendar) of receipt of the written agreement.

7. **Binding Nature of Mediation Agreement on the Early Intervention System**

The mediation agreement is binding on the early intervention system, based on its incorporation into the IFSP.

8. **Maintenance of Records**

Mediation records shall be maintained by the Procedural Safeguards Office for a period of at least three years plus the state statute of limitations.

**B. IMPARTIAL HEARING PROCEDURES (34 CFR 303.420- 303.425)**

1. **Statewide Impartial Hearing System**

A statewide impartial hearing system is available to ensure parents may voluntarily access a fair process for the resolution of individual disputes regarding the provision of early intervention services including identification, evaluation and assessment, eligibility determination, placement or the provision of appropriate early intervention services.

The Procedural Safeguards Office shall identify panels of impartial hearing officers to conduct due process hearings. Hearing panels are composed of a parent of a child who received early intervention services, an attorney, and a professional in the field of early childhood. Impartial hearing panel members must have knowledge about the provisions of Part C of IDEA and the needs of and services available for eligible children and their families. They are required to undergo training as a condition of serving as impartial hearing officers.

2. **Availability of Impartial Hearing System**

- a. Impartial due process hearings for the resolution of individual disputes regarding identification, evaluation and assessment, eligibility determination, placement or the provision of appropriate early intervention services are available upon the request of the parent.

- b. The panel appointed to conduct the hearing must be impartial. An impartial person, for the purposes of the Early Intervention System, cannot be an employee of any agency or other entity involved in the provision of early intervention services or care of the child, and does not have a personal or professional interest that would conflict with his or her objectivity in implementing the hearing process. A person who otherwise qualifies as a member of the panel is not an employee of an agency solely because the person is paid by the agency to implement the hearing process.
  - c. Bias: No hearing officer on the panel shall preside who has any bias with respect to the matter involved in the proceeding. Any party may file with the Procedural Safeguards Office a request, together with a supporting affidavit, that a hearing officer be removed on the basis of personal bias or for other good cause.
    - i. Evidence of bias: A hearing officer shall be disqualified for bias. Bias shall be determined to exist only when there is an expectation of pecuniary or other personal benefit from a particular outcome of the case; when the individual is an employee of any agency or other entity involved in the provision of early intervention service or care of the child; or, when there is a substantial likelihood that the outcome of case will be effected by a person(s) prior knowledge of the case, prior acquaintance with the parties, witnesses, representatives, or other participants in the hearing, or other predisposition with regard to the case. The appearance of impropriety shall not constitute bias and shall not be grounds for disqualification. A party seeking disqualification has the burden of demonstrating bias, by submitting an affidavit setting forth the facts establishing bias.
    - ii. Self-disqualification: A hearing officer may disqualify herself/himself on her/his own motion for bias or for any other reason, with explanation.
    - iii. Determination of bias: The panel members who are not the subject of the disqualification request shall rule on the request for disqualification. Such panel members may also move for disqualification of another panel member for bias. Upon the refusal of the impartial hearing officer to voluntarily withdraw from the case, or the decision of the remaining panel members rejecting the disqualification request, the party filing the request shall have the right to appeal this decision. The appeal may be made to:
      - (1) The Procedural Safeguards Office; and then to, or directly to,
      - (2) A state or federal court of competent jurisdiction.
    - iv. Continuation of hearing: Any such appeal shall not interrupt the hearing proceedings unless the parties consent to an adjournment pending the outcome of the appeal or are otherwise ordered by the entity responding to the appeal.
  - d. No person shall serve as a hearing officer in the same matter in which they served as a mediator.
3. **Request for Impartial Hearing**
- A request for an impartial hearing must be made in writing and signed and dated by a parent or, with the parent's consent, the parent's representative, and submitted to the Procedural Safeguards Office. If a parent wishes to file a request for a due process hearing, it is the responsibility of the service coordinator and/or the REIC to assist the parent, in the parent's primary language and/or mode of communication to the maximum extent possible to prepare the request in written form. If a written

complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not part of the due process, including any allegations of systemic violations raised in the complaint, action must be resolved within the 60-calendar day timeline using the complaint procedures described.

4. **Responsibilities of Procedural Safeguards Office**

The Procedural Safeguards Office maintains a log of all requests for a due process hearing. Each request for a hearing shall be date-stamped immediately upon receipt. The date the request was received and name of the requester are entered into the hearing log. The completion date of each step in the process must be entered in the hearing log. Each hearing is numbered sequentially by year. For example, H: 01-SFY02 would be the first hearing request received in state fiscal year 2002. A file is created containing all the documents related to the hearing. All official documents related to the hearing shall reflect the case number.

- a. Assurance of impartial hearing procedures: The Procedural Safeguards Office shall maintain impartial hearing procedures in accordance with applicable state and federal law and regulation.
- b. Assignment of Panel: An impartial hearing panel composed of a parent of a child with a developmental delay or disability (regardless of the child's current age), an appointed attorney, and a professional in the field of early childhood is appointed.
- c. Expedited Hearing: If a request for an expedited hearing has been filed, either verbally or in writing (including fax and e-mail), alleging harm to the child's health or welfare, the Procedural Safeguards Office shall review the allegations, and if appropriate, select an impartial hearing panel to conduct the hearing within 10 calendar days. If the original request was taken verbal and the Procedural Safeguards Office determined that an expedited hearing was not necessary, then the parent make take an opportunity to resubmit the request in writing with supporting documentation as appropriate.
- d. Notice of Hearing: The Procedural Safeguards Office also notifies the parent of the availability of mediation and arranges a convenient date and time for the hearing, which is scheduled no later than 20 calendar days from the request for the hearing. The Procedural Safeguards Office provides the parent and respondents with the notice of the hearing within five calendar days of the request for the hearing. If any party is represented by counsel, notice shall also be served upon the attorney representing such party.
- e. Contents of Hearing Notice: The notice of hearing shall, at a minimum:
  - i. Specify the date, time and place of the hearing, which shall be reasonably convenient to the parent(s), and which shall be no later than 20 calendar days from the date of request for a hearing.
  - ii. Explain the procedures for conducting the impartial hearing.
  - iii. Advise the parent:
    - (1) Of the availability and procedures for requesting mediation;
    - (2) Of the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children;



- (3) That it is not necessary to have an attorney at the hearing and that if they decide not to bring an attorney, the other parties cannot bring attorneys to the hearing;
  - (4) Of the right to inspect and review their child's early intervention record without unnecessary delay and before the hearing and the right to request copies of these records. Fees may be charged for copies of records if they do not prevent a parent from exercising their right to inspect and review these records. Fees may not be charged to search for or to retrieve records;
  - (5) Of the right to have an interpreter or translator to the maximum extent possible, as needed; and
  - (6) About legal services and advocacy organizations available to assist them in the impartial hearing process.
- iv. Advise the parties:
- (1) They have a right to present evidence, and confront, cross-examine and compel the attendance of witnesses;
  - (2) That they are not entitled to reimbursement of fees and expenses for attorneys, witnesses or any individuals accompanying them to the hearing;
  - (3) When submitting evidence to the Procedural Safeguards Office, the parties are requested to number each document and provide a corresponding listing of the documents by number and title. The Procedural Safeguards Office will copy and disseminate written evidence from all parties, if received in the Procedural Safeguards Office ten calendar days prior to the hearing. Copying and dissemination of all evidence not submitted to the Procedural Safeguards Office within ten calendar days becomes the responsibility of each party as long as the evidence is provided to the other parties and the hearing panel within five calendar days before the hearing. Families, for whom this presents a burden, may contact the Procedural Safeguards Office;
  - (4) As except that was provided in Section II, B, 10, d, iii, they have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five calendar days before the hearing;
  - (5) They have a right to obtain a written or electronic verbatim transcription of the hearing;
  - (6) They have the right to obtain written findings of fact and decisions within 30 calendar days of the receipt of the request for the hearing;
  - (7) They will be asked to make an opening and a closing statement;
  - (8) The hearing panel will determine which party will be the first to present their side of the dispute;
  - (9) That the burden of proof rests with the respondent (agency, provider, DHSS or REIC). The standard for burden of proof is "preponderance of evidence".
  - (10) They must contact any witnesses they have decided they want to speak at the hearing, giving these witnesses the date, time and place of the hearing;

- (11) They are required to provide a list of witnesses to the opposing party(s) at least ten calendar days prior to the hearing. If any witness informs them they do not intend to attend the hearing or if they are not sure if a witness will attend, they should contact the Procedural Safeguards Office who will contact the hearing panel to request that the panel compel the witness to attend the hearing;
  - (12) Of the right to appeal the decision of the hearing officer panel to a state or federal court of competent jurisdiction;
  - (13) That the child must continue to receive the appropriate early intervention services currently being provided pending the decision of the hearing officer panel and any appeal of such decision, unless the parent and public agency otherwise agree. If the hearing involves an application for initial services under Part C of IDEA, the child must receive those services that are not in dispute; and
  - (14) That any individual representing the parent(s), including their counsel, has the right to review, inspect and request copies of the child's records with the written consent of the parent.
- v. As appropriate, include the agency calendar for all respondents.
- f. Representation by counsel: If the parent is to be represented by counsel, this information must be communicated to the Procedural Safeguards Office as soon as possible but no later than five calendar days following the receipt of the notice of the hearing date. The Procedural Safeguards Office will notify the respondent(s) of this decision immediately. If the respondent(s) decides to be represented by counsel, they shall notify the parent and parent's counsel within five calendar days of their intent to also be represented by counsel. It is not necessary to have an attorney at the hearing and if the parent decides not to bring an attorney, the other parties can not bring attorneys to the hearing.
  - g. Evidence: The Procedural Safeguards Office is responsible for ensuring that evidence is sent to all parties and the hearing panel members in accordance with (B.4. d. iv.) of this document.
- 5. **Documentation of Notices**  
All notices and papers connected with a hearing will be sent by overnight delivery or mail return receipt.
  - 6. **Impartial Hearing Officer Panel Duties**  
The impartial hearing panel shall conduct the impartial hearing in a fair and impartial manner and shall be responsible to:
    - a. Rule upon requests by parties to the hearing, including all requests for postponement or continuance, which shall not be granted unless both parties agree, or unless there are compelling reasons in the absence of agreement;
    - b. Administer oaths and affirmations and issue notices requiring the attendance and testimony of witnesses and the production of books, records and other evidence pertinent to the impartial hearing;
    - c. Limit the number of times any witness may testify, repetitious examination or cross-examination, and the amount of corroborative or duplicative testimony, taking into consideration the experience of the parties and/or their representation by counsel;
    - d. Hear arguments on facts and/or law;

- e. Request that the parties make opening and/or closing statements. These statements are brief summaries of the issues in the case and the desired outcome from the perspective of the parties. Neither opening or closing statements are considered evidence by the hearing panel;
  - f. Provide the parties an opportunity to meet prior to the hearing conference to consider matters which may simplify the issue, facilitate reaching a negotiated settlement, or expedite the hearing, and which may ensure that the parties understand the procedures governing the hearing;
  - g. Ensure that a written or electronic verbatim transcription of the proceedings is created; and
  - h. Perform such other acts as may be necessary for the maintenance of order and efficient conduct of the impartial hearing, unless otherwise prohibited by law or regulation.
7. **Right to Record of Proceedings**  
The Procedural Safeguards Office shall ensure that a stenographer is secured for each due process hearing. Parties have the right to obtain a written or electronic verbatim transcription of the proceeding, at no cost, within fifteen (15) business days of the hearing.
8. **Translation & Interpretation at Impartial Hearings**  
The Procedural Safeguards Office shall ensure that at all stages of the hearing a qualified interpreter of the deaf and, to the maximum extent possible, an interpreter fluent in the primary language of the parents of the child who is a party to the hearing is available, as necessary.
9. **Postponement or Continuance of Hearing**
- a. If a party needs to postpone a scheduled hearing, the party shall contact the Procedural Safeguards Office. The Procedural Safeguards Office shall forward the request to the attorney on the hearing panel for a determination of whether a postponement should be granted. If the request for postponement is granted, a rescheduled hearing date shall be established, to the maximum extent possible within five days from the date of the postponed hearing. The Procedural Safeguards Office shall notify the parties of the hearing panel's decision, including the new timelines of the hearing process and the new hearing date, time and place.
  - b. If any party to the hearing fails to appear at the hearing, the hearing panel shall attempt to contact the party by phone while the other party(s) remain. If the party cannot be reached, the hearing panel will adjourn the hearing after one hour from the scheduled starting time. The Procedural Safeguards Office using the procedures in this section will then reschedule the hearing.
  - c. As necessary, the hearing panel may call for a continuance and so notify the Procedural Safeguards Office. The Procedural Safeguards Office shall notify the parties of the scheduled date, time and place.
10. **Conduct of Hearing**  
The procedures used to conduct the impartial hearing shall provide the parties with a fair and prompt resolution of any dispute.
- a. Representation at the hearing: The parties to the impartial hearing may be represented by legal counsel and individuals with special knowledge or training with respect to children eligible for early intervention services and may be

accompanied by other persons of their choice. If counsel does not represent the parent, no other parties may be represented by counsel.

- b. Open or closed hearing: The impartial hearing shall be closed to the public unless the parent requests an open hearing. Upon such request, the hearing panel shall make a determination regarding whether the hearing shall be opened to the public.
- c. Presentation of evidence and questioning witnesses: The parties to the impartial hearing, and their respective counsel or representative, if any, shall have an opportunity to present evidence and confront, cross-examine, and compel the attendance of witnesses. All witnesses to the hearing are asked to leave the hearing room until they are called to testify by the hearing panel.
- d. Disclosure of evidence: All evidence shall be disclosed to the opposing party(s) and the hearing panel at least five calendar days before the hearing. Any party has the right to prohibit the introduction of any evidence at the proceeding that was not disclosed to the other party(s) at least five calendar days before the proceeding.
  - i. The intent of the five-day timeline is to avoid surprise by either party at the hearing.
  - ii. The hearing panel has discretion to determine the consequences of not meeting the timeline.
  - iii. The hearing panel may:
    - (1) With the consent of all parties, or for good cause shown, allow for introduction of new evidence; or
    - (2) Prohibit the introduction of the evidence; or
    - (3) Allow the rescheduling of the hearing so that the timeline can be met.
- e. Swearing-in of witnesses: Each witness shall be sworn or given an affirmation by the hearing officer panel.
- f. Rules of evidence: The hearing officer panel shall consider all relevant evidence and shall include as part of the record all records, documents, and memoranda submitted into evidence. The formal rules of evidence do not apply; however, clearly irrelevant, immaterial, or prejudicial evidence shall not be admitted.
- g. Burden of Proof: The burden of proof in a due process hearing is on the respondent(s) (i.e. agency, provider, DHSS or REIC). The standard for burden of proof is “preponderance of evidence”.
- h. Stipulation: The parties may enter into a stipulation to resolve the matters in dispute at any time prior to the issuance of a decision by the impartial hearing officer panel.
  - i. The parties shall inform the hearing officer panel of such stipulation.
  - ii. Upon such notice, the hearing officer panel shall terminate the proceedings and provide notice to the Procedural Safeguards Office of the termination.
- i. Consent Order: The hearing officer panel may issue a consent order upon such stipulation by the parties, which has the full force and effect and shall be implemented in the same manner as an order issued by the hearing officer panel.
- j. Written decision: Upon conclusion of the proceedings, the hearing officer panel shall render a written decision within 30 calendar days of the request for the hearing, which shall include:
  - i. Findings of fact and conclusions of law;
  - ii. A determination regarding the matters in dispute;

- iii. An order of implementation of the determination;
  - iv. The right to appeal the decision to a state or federal court of competent jurisdiction; and
  - v. Whether the hearing panel will be retaining jurisdiction over the matter.
  - k. Finality of hearing order: The decision of the hearing officer panel shall be final, and any party may seek review by a state or federal court of competent jurisdiction.
  - l. Dissemination of written decision: A copy of the written decision is provided to the Procedural Safeguards Office which shall mail the written decision to all parties to the hearing. A copy of the written decision shall also be sent to the service coordinator to be placed in the child's early intervention record.
  - m. Modification of IFSP: The service coordinator shall modify the Individualized Family Service Plan no later than five business days (based on approved agency calendar) after receipt of the written decision.
  - n. Maintenance of records and decisions: The records and decisions by hearing officer panels shall be maintained by the Procedural Safeguards Office for at least three years plus the state statute of limitations, or until the conclusion of all due process proceedings and appeals, whichever is later.
11. **Appeals**
- Any party may appeal the findings and decision of the impartial hearing officer panel to the Superior Court of New Jersey, Pursuant to the Rules Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to Section 639 (a)(1) of the IDEA.

## **C. COMPLAINT INVESTIGATION & RESOLUTION PROCEDURES (34 CFR 303.510- 303.512)**

### **1. Definitions**

- a. **Complaint**: A complaint is a written and signed statement of facts that identifies issues and concerns, charges and/or allegations filed by individual, families, groups, organizations, or from any source, including an organization or individual from another state, indicating a deficiency(s) in the fulfillment of the requirements, or a violation of the requirements, by public or private agencies, which are or have been receiving financial funding or payment under Part C of IDEA or other pertinent state or federal early intervention legislation; or by other public agencies involved in the state's early intervention system. A few examples of issues that may be addressed in a complaint are:
  - i. The complaint may involve a situation where a public agency or private service provider under contract with the Early Intervention System has failed to meet an established procedure or policy as required by Part C of IDEA, its implementing regulations, or relevant state law and guidelines.
  - ii. The complaint may relate to a specific concern about the IFSP process.
  - iii. The complaint may relate to a specific concern about the evaluation and assessment process under Part C of IDEA.
- b. **Complainant**: A complainant is an individual, family, group or organization, including from another state, who files a complaint with the Procedural Safeguards Office.

- c. Respondent: A respondent is the party against which the complaint is filed. Respondents can be:
  - i. Any public agency, including DHSS, that receives funding under Part C of IDEA, its implementing regulations or relevant state law and guidelines;
  - ii. Any other public local agency that is involved in the state's early intervention system (i.e., Special Child Health Services);
  - iii. Any private service provider, including a provider of evaluation services, that receives Part C of IDEA or state early intervention funds for the provision of early intervention functions or services; or
  - iv. Any Regional Early Intervention Collaborative.

## 2. **Complaint Filing Procedures**

The general procedures for filing a complaint are outlined in this section. Complaints are filed with the Procedural Safeguards Office. DHSS is responsible for investigating any complaint it receives including individual child complaints and those that are systemic in nature. A parent who files a complaint that generally affects only a single child or the child's family, and is not directed against a policy, pattern, or practice that is alleged to be a violation of Part C of IDEA or State early intervention law or guidelines, is provided information concerning mediation and/or impartial hearing proceedings, and the opportunity to request such proceedings.

- a. A complaint must include:
  - i. A statement that an individual, program, or agency has violated a requirement of federal or state early intervention law or guidelines;
  - ii. The facts on which the complaint is based; and
  - iii. The signature of the individual filing the complaint, or the signature of an individual authorized to act on behalf of an organization.
- b. The alleged violation must have occurred not more than one year before the date that the complaint is received by the Procedural Safeguards Office unless a longer period is reasonable because:
  - i. The alleged violation continues for that child or other children; or
  - ii. The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the Procedural Safeguards Office receives the complaint.

**Note:** No verbal complaints shall be accepted from an organization or individual other than a parent. If a parent wishes to file a complaint, it is the responsibility of the service coordinator and/or the REIC to assist the parent, in the parent's primary language and/or mode of communication, to the maximum extent possible, to prepare the complaint in written form. If the parent prefers, they can request assistance from the Procedural Safeguards Office.

## 3. **Complaint Receipt Procedures**

- a. The Procedural Safeguards Office maintains a log of all complaints received. Each complaint shall be date-stamped immediately upon receipt. The date the complaint was received and name of the complainant are entered into the complaint log. The completion date of each step in the process must be entered in the complaint log. Each complaint is numbered sequentially by year. For example, C: 01-SFY02 would be the first complaint received in state fiscal year 2002. A file is created containing all the documents related to the complaint.

- b. Upon receipt of each complaint, the Procedural Safeguards Office shall be responsible for determining, within 5 business days of the date of complaint receipt, the substance of the allegations in the complaint and whether it is:
  - i. A Part C of IDEA matter that will be investigated through the Part C of IDEA complaint system; or
  - ii. Not a Part C of IDEA matter.
- c. If the Procedural Safeguards Office determines that the complaint is not a Part C of IDEA matter, the complainant shall be informed within 2 business days of that determination.
- d. If the complainant requests anonymity, the Procedural Safeguards Office determines if it is possible to investigate the complaint while maintaining confidentiality of the complainant's identity.
  - i. If yes, the Procedural Safeguards Office removes all personally identifiable information from the complaint and any accompanying documentation throughout the complaint investigation.
  - ii. If no, the Procedural Safeguards Office notifies the complainant that it is not possible to conduct the investigation without acknowledging the complainant's identity and determines with the complainant, if the complaint investigation should proceed.
- e. If the Procedural Safeguards Office determines that the complaint is a Part C of IDEA matter to be investigated, the respondent(s), the relevant REIC, and the complainant shall be notified within 2 business days of that determination and sent a copy of the complaint procedures. The respondent and the relevant REIC also receive a copy of the complaint. The notice to all parties includes:
  - i. A summary of the complaint.
  - ii. The determination of the Procedural Safeguards Office regarding whether or not an on-site investigation is necessary, if that determination has already been made.
  - iii. A statement that no change in services provision may be made during the pendency of complaint investigation procedures, and that any retaliation against the complainant is unlawful and may lead to other proceedings.
  - iv. The opportunity to submit, within 7 business days (based on approved agency calendar) of receipt of this notification, written or verbal information responsive to the allegations in the complaint.
  - v. Notice that failure to cooperate with any investigation shall subject the named party(s) to contract termination, cessation of payments, or other action.
- f. During the 7 business days after the receipt of the complaint, the Procedural Safeguards Office, in consultation with the complainant, should offer both informal and formal mediation to resolve the complaint. If the complainant is willing to utilize formal mediation, the mediation procedures contained in these guidelines are followed. The mediation process must be completed within 15 calendar days and cannot delay the 60-calendar day timeline for resolution of the complaint.
- g. If the complainant agrees to pursue informal mechanisms, the Procedural Safeguards Office shall ensure that the informal process proceeds and that all documentation is collected and maintained in the complaint record. If informal resolution is achieved it must be documented and signed by the parties and filed

with the complaint record. If such resolution is achieved, the complainant shall be requested to sign the form withdrawing such complaint. If such informal mechanisms do not resolve the issue, the Procedural Safeguards Office shall complete the investigation and issue a report within the sixty calendar days as required.

**4. Complaint Investigation Procedures**

- a. During the investigation, the Procedural Safeguards Office:
  - i. Makes a determination if an on-site investigation is necessary, and conducts such an investigation.
  - ii. Reviews all relevant information, including the results of any on-site investigation, pertinent written records and documents such as forms, reports and files, and any additional information provided by the party(s).
  - iii. Conducts personal interviews with the complainant, the respondent(s) and any other relevant party including REICs and state agencies, if necessary.
  - iv. Contacts other individuals, including advocates or other parties, who may have important knowledge or information relative to the complaint, or specialized expertise pertinent to the complaint, if necessary.
  - v. If the complaint challenges the appropriateness of decisions regarding a child's services or placement, the Procedural Safeguards Office determines whether required procedures were followed and whether the decision reached is consistent with Part C of IDEA requirements in light of the individual child's abilities and needs.

**5. Complaint Resolution and Implementation Procedures**

- a. Within 60 calendar days of receipt of the complaint, unless exceptional circumstances exist with respect to a particular complaint, the Procedural Safeguards Office shall issue a written determination to the complainant and the named party(s) which addresses each allegation in the complaint and contains:
  - i. Findings of fact and conclusions and the reasons for the Procedural Safeguards Office's final decision;
  - ii. If needed, the Procedural Safeguards Office requires the named party(s) to develop and implement a plan of action outlining procedures for effective implementation of the final decision. If needed, technical assistance activities, negotiations, and corrective actions to achieve compliance;
  - iii. A request and instructions for development and submission of detailed corrective action plan, if necessary, including specifying the date(s) by which corrective actions must be implemented; and
  - iv. Remedies when a denial of necessary services occurred, including (as appropriate) the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family and appropriate future provision of services for all infants and toddlers with disabilities and their families.
- b. If appropriate to the complaint, a copy of the decision shall be sent to the relevant REIC and the child's service coordinator. If applicable, the service coordinator shall modify the IFSP no later than five business days (based on approved agency calendar) after receipt of the written decision.
- c. If any named party(s) has not cooperated with the complaint investigation, and/or have taken retaliatory action against any complainant, the Procedural Safeguards Office shall also issue a finding of failure to cooperate, which outlines



the specific nature of the failure to cooperate and describes the appropriate corrective action(s) which shall be taken, including but not limited to possible cancellation of contract, cessation of payment, disqualification as a service provider, and/or other remedial action(s).

- d. Any DHSS funded provider of early intervention services who, on the basis of an investigation pursuant to a complaint, is found to be disqualified to provide such services shall immediately receive written notification of cessation of services and cancellation of contract in accordance with contract procedures. DHSS will work with relevant REICS and SCHS-CMUs (service coordinators) to notify parents immediately by whatever means available of the change in service providers and their right to access dispute resolution procedures. This notice shall be followed by written notice pursuant to written notice procedures in I A 2-4 of these guidelines. Arrangements for the provision of services by a qualified provider shall be made within 10 business days to the maximum extent possible. As appropriate, families may receive compensation for missed services.
- e. The date on which the complaint determination is sent shall be entered on the complaint log.
- f. The Procedural Safeguards Office shall provide for the periodic review of the subject of the investigation until corrective actions have been taken and/or a corrective action plan has been fully implemented. If appropriate, on-site follow-up investigation(s) will be performed to ascertain that all appropriate corrective actions have been taken by the subject(s) of the investigation, as part of routine monitoring, approval, licensure or certification process, and/or as determined necessary by the Procedural Safeguards Office. These steps will be entered onto the log.
- g. During the pendency of any compliant investigation, the REICs shall ensure that the following services for the child and family are implemented:
  - i. The services provided pursuant to the IFSP currently in effect; or
  - ii. The services in any sections of a proposed IFSP that are not in dispute.
- h. The written determination of the Procedural Safeguards Office shall be issued no later than 60 calendar days from receipt of the complaint, except in the case of exceptional circumstances justifying an extension of these time limits. All parties will be informed in writing of the extension, the circumstances for the extension, and the new timelines. Extensions should be given rarely, and only upon a factual showing that “exceptional circumstances” exist justifying such an extension.
- i. If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not part of the due process action, including any allegations of systemic violations raised in the complaint,